IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 20243 of 2004

Between:

1 Syed Azmath Ali, S/o. Syed Ali,
R/o. H.No.3-143, Hanuman wada, Dharmapuri Village & Mandal,

Karimnagar District.
2 Syed Yasin, S/o. Syed Rasool,
R/o. 4-167, Near Bus Stand, Dharmapuri Village & Mandal, Karimnagar

District.
3 Syed Yousuf, S/o. Syed Yasin,
R/o. 4-168, Dharmapuri Village & Mandal, Karimnagar District.
4 Syed Abid Ali, S/o. syed Ali,
R/o. 14-147, Khazi Mohalla, Dharmapuri Village & Mandal, Karimnagar

District.
5 Syed Aziz, S/o. Syed Ali,
R/o. 14-147, Khazi Mohalla, Dharmapuri Village & Mandal, Karimnagar

District.

..... PETITIONERS

AND

1 The Andhra Pradesh State Wakf Board, Rep. by its Chief Executive Officer,.

Haj House Complex, Opposite to Public Gardens, Nampalli, Hyderabad.
2 The District Revenue Officer, and District Wakf Officer, C/o. Collectorate

Complex, Karimnagar.
3 The President, District Wakf Committee,
Collectorate Complex, Karimnagar.
4 Muslim Committee, Rep. by Advisor Mr. Mohd. Afzal, S/o. Mohd. Ibrahim,
R/o. Dharmapuri Village and Mandal, Karimnagar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction, in the nature of Mandamus, declaring the letter bearing Number M1/51/KNR/Prot/2004 dated 5-10-2004 addressed by the 1st respondent herein to the 2nd respondent herein, directing to evict the petitioners from the land in survey NO.643, situated at Dharmapuri Village and Mandal, Karimnagar District, as being illegal, arbitrary, capricious, malafide and contrary to Section 54 of the Wakf Act of 1995.

Counsel for the Petitioner: MR.SYED SHAREEF AHMED

Counsel for the Respondent No.1 : MR.A.M.QURESHI

Counsel for respondent No.4 : Mr.Ali Farooq

WRIT PETITION NO : 20565 of 2004

Between:

1 Syed Ameer, s/o Syed Meer,
House No.15-15, Qazi Mohalla, Dharmapuri Village and Mandal,
Karimnagar District.
2 Syed Nihal, s/o Syed Ali,
House No.14-147, Qazi Mohalla, Dharmapuri Village and Mandal,
Karimnagar District.
3 Syed Mouzam Ali, s/o Fateh Ali,
House No.15-18, Qazi Mohalla, Dharmapuri Village and Mandal,

Karimnagar District.
4 Syed Mujahid, s/o Syed Mustaba Ali,
H.No.15-18, Qazi Mohalla, Dharmapuri Village and Mandal,
Karimnagar District.
5 Aziza Bi, w/o late Syed Ahmed,
D.No.15-7, Qazi Mohalla, Dharmapuri Village and Mandal,
Karimnagar District.
6 Mohd.Shamsheer Khan, s/o Vali Mohd.Khan,
House No.15-9, Qazi Mohalla, Dharmapuri Village and Mandal,
Karimnagar District.

..... PETITIONERS

AND

1 The Andhra Pradesh State Wakf Board, rep., by its Chief Executive Officer,
Haj House Complex, Opposite to Public Gardens, Nampalli, Hyderabad.
2 The District Revenue Officer and Dist.Wakf Officer, Collectorate Complex,

Karimnagar.
3 The President, District Wakf Committee,
Collectorate Complex, Karimnagar.
4 Muslim Committee, reptd., by its Advisor Mr.Mohd.Afzal, s/o

Mohd.Ibrahim, Dharmapuri Village, Karimnagar Mandal and District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, in the nature of mandamus, declaring the letter bearing No.M1/51/KNR/Prot/2004 dated 5-10-2004 addressed by the 1st respondent to the 2nd respondent herein, directing to evict the petitioners from the land in Sy.No.643, situated at Dharmapuri village and Mandal, Karimnagar District, as being illegal, arbitrary, capricious, malafide and contrary to Section 54 of the Wakf Act of 1995; and pass such further or other orders

Counsel for the Petitioner:MRSYED SHAREEF AHMED

Counsel for the Respondent No.: MR.A.M.QURESHI

Counsel for Respondent No. 4: Mr.Ali Farooq

The Court made the following :

THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.Nos.20243 & 20565 of 2004

COMMON ORDER:

In these Writ Petitions Notice Before Admission had been ordered and pending further orders status quo had been directed to be maintained.

2. **Heard Sri Syed Shareef Ahmed, Counsel representing the writ petitioners and Sri A.M. Qureshi, Counsel representing the A.P. Wakf Board. In view of the fact that common questions are involved in both the Writ Petitions, these Writ Petitions are being disposed of by a common order.**

3. **These Writ Petitions are filed questioning the letter bearing No.M1/51/KNR/PROT/04 dated 5-10-2004 addressed by the 1st respondent to the 2nd respondent and for such other suitable reliefs. The said letter dated 5-**

10-2004 addressed to the District Revenue Officer & District Wakf Officer, Karimnagar reads as hereunder :

ANDHRA PRADESH STATE WAKF BOARD

Haj House Building,

Nampally, Hyderabad

No.M1/51/KNR/Prot/2004 Dated : 5-10-2004

From To

The Chief Executive Officer, The Dist. Revenue Officer &

A.P. State Wakf Board, District Wakf Officer,

Hyderabad. Karimnagar District.

Sub:- Wakfs-Karimnagar District-Dharmapuri Mandal-

Jamia Masjid with attached lands at Dharmapuri

Construction of huts on the mosque land – Removal –

Req-Reg.

Ref:- From the President Dist.Wakf Committee, Karimnagar

Letter dated 16-9-2004.

***

I am to state that there is a Jamia Mosque Alamgir at Dharmapuri village attached with service inam lands in various Sy.Nos. It is brought to the notice of this office that some unsocial elements have encroached upon the wakf land in Sy.No.643 situated in Dharmapuri village and constructed huts thereon.

A copy of the letter of the President Dist. Wakf Committee, Karimnagar District is enclosed herewith.

I request you to initiate immediate necessary action for the removal of

illegally constructed huts from the wakf land at an early date.

Yours faithfully,

Sd/-

Chief Executive Officer

4. **A counter affidavit in detail had been filed in W.P.No.20565/2004. Both the Counsel made elaborate submissions, the Counsel for the writ petitioners contending that the possession of the writ petitioners cannot be disturbed unless and until the procedure contemplated by the provisions of the Wakf Act, 1995, hereinafter referred to as "Act" for the purpose of convenience, are followed and on the contrary the Standing Counsel for the A.P. State Wakf Board, hereinafter referred to as "Board" in short, contending that the impugned proceedings in fact had been issued in accordance with law and at any rate the Writ Petitions are pre-mature and these Writ Petitions are filed only anticipating future action and hence no relief can be granted.**

5. **The writ petitioners in W.P.No.20565/2004 had averred that Alamgiri Masjid is a registered wakf institution published in the Gazette dated 18-1-1990 at Serial No.9318 with its attached properties showing the name of father of the 3rd petitioner as Muthawalli. The said institution has got four inamdars namely (1) Syed Mahaboob Ali (2) Syed Fareed, (3) Syed Rasool and (4) Syed Ghouse and each were having 4 annas share and when Mahaboob Ali died a succession was issued in 1348 Fasli wherein the father's name of the 3rd petitioner i.e., Fateh Ali, is shown. It is also stated that the 1st petitioner and the 5th petitioner are from the branch of Syed Rasool and the 2nd petitioner is the Junior**

paternal cousin's brother of the 3rd petitioner and the 4th petitioner is the son of his deceased brother. 6th petitioner is the husband of the grand daughter of Syed Fareed and he represents Syed Fareed's branch. It is stated that they are in possession of the properties in question as inamdars and they are not encroachers and the father of the 3rd petitioner was mentioned in the Muntakab, he being eldest among the other inamdars. It is also stated that the 4th respondent is a gang of land grabbers formed into unlawful organization without registration and styling to represent the Association made a false complaint against the writ petitioners and the other family members in pursuance of which the impugned action appears to have been initiated. Specific stand was taken that the property in question i.e., land in S.No.643, situated at Dharmapuri village and mandal, Karimnagar District is in their possession and enjoyment being inamdars they are rendering service and they are not encroachers. The 3rd respondent appears to be the member of the gang like the birds of a feather flock together and acted promptly and addressed a letter to the 1st respondent on 16-9-2004 stating that the wakf land is being occupied by unsocial elements and some huts had been constructed. It is also stated that the 1st respondent without following the procedure contemplated under Section 54 of the Act addressed a letter to the 2nd respondent to evict the petitioners from the land which is wholly untenable since the petitioners are not encroachers. The procedure be followed in this regard and the scope and ambit of Section 54 also had been narrated in detail.

6. **W.P.No.20243/2004 also is filed for similar relief and it is stated that the petitioners are the inamdars and are in possession of their land in their own right and they are neither land grabbers nor encroachers of the wakf property but are rendering service as per the Muntakab and are in possession of the aforesaid land. The other averments made in the Writ Petition also are virtually on the same lines as in the other Writ Petition.**

7. **A counter affidavit was filed in W.P.No.20565/2004 wherein the allegations were denied. Specific stand was taken that the letter addressed to the 2nd respondent cannot be termed as an order under the provisions of Section 54 of the Act and the petitioners had not understood the same in proper perspective. The 1st respondent being the statutory body is vested with the general power of superintendence under Section 32 of the Act over all wakfs and the wakf properties in the entire State of A.P. under clause (h) of sub-section (2) of Section 32 of the Act and the Board is vested with the powers to take measures for the recovery of lost properties of any wakf or wakf institution. It was further stated that on 4-9-2004 a representation was filed by Muslims of Dharmapuri village stating that some unsocial elements encroached upon the wakf land in Sy.No.643 and constructed huts. On the representation of the President, District Wakf Committee inspected the land personally and enquired and submitted a report dated 6-9-2004 to the C.E.O. of the Board that some persons encroached upon the wakf land in Sy.No.643 and constructed huts and requested to take action for removal of huts early. Pursuant to this report, the C.E.O. of the Board addressed a letter**

No.M1/51/KRN/Prot/2004 dated 5-10-2004 to the District Revenue officer and District Wakf Officer, Karimnagar, to initiate immediate necessary action for the removal of illegally constructed huts in Sy.No.643. A copy of the letter was marked to the M.R.O., Dharmapuri with a similar request. In pursuance of the C.E.O's. letter the M.R.O. Dharmapuri issued instructions to the M.R.O. Dharmapuri and Panchayat Secretary, Dharmapuri to remove the illegally constructed huts vide Memo No.B/194/2004 dated 18-10-2004. When the Village Secretary and M.R.I. went to the spot the encroachers i.e., Azmath Ali and others resisted them and created law and order problem. The M.R.O. Dharmapuri filed a complaint before the S.I. of Police, Dharmapuri to take action against them and to see that no constructions are made in Sy.No.643, extent Ac.7-09 gts. It was further stated in the counter affidavit that the land bearing Sy.No.643 measuring Ac.7-09 gts. situated at Dharmapuri village and mandal was a Mashruthul Khidmath Inam lands under Mosque Dharmapuri. One late Syed Mahaboob Ali was the original Inamdar and Muthawalli of the same. After the death of Syed Mahaboob Ali, his son late Fateh Ali became Mutawalli of the land and other lands and managing the same and maintained the Masjid for which the land was endowed. After his death, his son Syed Mahaboob Ali acted as Mutawalli and managed the land under dispute and other lands till the year 1973. Therefore after he applied to the Board to take possession of inam lands including Sy.No.643 the Board by an order dated 26-9-1977 appointed one Wajeeduddin, the President of the District Wakf Committee, Karimnagar as Receiver. Subsequently he was removed and

Inspector of Wakf was ordered to take possession of all the inam lands including Sy.No.643. Accordingly the Inspector has taken over the possession on 12-5-1975 and since then the Board had been managing the lands including Sy.No.643 by leasing out on Eksala cultivation. In the year 1975-76 one Syed Vazeer s/o. Syed Fareed illegally occupied the land and sold away certain extents to third parties who erected huts in Sy.No.643. The then Tahsildar, Jagtial issued notice under Sections 6 and 7 of A.P. Land Encroachment Act 1905 for eviction of the illegal encroachers over Sy.No.643 measuring Acs.7-09 gts. Syed Fazir and (11) others filed W.P.No.4404/1979 and this Court allowed the Writ Petition on 29-1-1980 with the observation that : "It is not necessary to advert to the lis raised in the W.P. for the Tahsildar, Jagtial in his counter averred per proceedings in Ref.No.766/79 on May, 2 1979 the Government had transferred the land in question covered by Survey No.643 to the A.P. Wakf Board. Once that is accepted the A.P. Wakf Board is the holder of the land in question from May, 2 1979. The obvious result of such a transfer is that the Government ceased to have any right, title and interest in the land in question even by the date of the notice under Section 7 of the Act. The question whether the lands as of fact was taken possession on June, 18, 1979 in view of the circumstances need not be decided in this W.P. The notices under Section 7 dated May, 11, 1979 and under Section 6 dated June 2, 1979 pertaining to the land in Survey No.643 (Ac.7.09 gts) of Dharmapuri village of Jagtial Taluka are hereby quashed". By taking advantage of the said orders the encroachers got managed to enter their names illegally in the Revenue Records. The name of Syed Vazir has been recorded as Pattedar in respect of

Sy.No.643. According to pahani for the year 2002-2003 the name of Syed Vazeer had been recorded as pattedar and the names of the following persons are recorded as occupants against Sy.No.643 :

Name of the occupant Extent Nature of occupation

---

1. Syed Mahaboob Ali s/o. Fateh Ali 1.32 Hereditary

2. Syed Jalaluddin s/o. Moinuddin 1.21 -do-

3. Syed Ahmed s/o. Rasool 1.32 -do-

4. Syed Rabia Bee w/o.Vazir 1.22 -do-

5. Bheemanathi Chandrasekhar

s/o. Gangaram 0-03 Purchaser

6. Kumari Lachaiah s/o.Buchaiah 0-03 -do-

7. Kanakuntala Bapu Reddy

s/o. Ram Reddy 0-04 -do-

8. Sarampalli Subash Rao

s/o. Raheshwar Rao 0-06 -do-

9. Idagottu Pochaiah s/o. Veeraiah 0-02 -do-

10. Vollepu Narsaiah s/o.Mallaiah 0-02 -do-

11. Allakonda Narsaiah s/o.Rajaiah 0-02 -do-

Therefore the Board represented through the President, District Wakf Committee, Karimnagar filed O.S.No.246/1983 for declaration of title and recovery of possession, mandatory injunction and future mesne profits in respect of land measuring 0-10 guntas out of Ac.7-02 guntas in Survey No.643.

The District Munsif, Jagtial passed decree on 1-12-1992 in favour of the Wakf Board. Thereafter the encroachers filed appeal before the Subordinate Judge at Jagtial in Appeal Suit No.2/1993. The appeal suit was dismissed and the Judgment passed by the lower court was confirmed by the Subordinate Judge, Jagtial by the Judgement dated 27-12-1997 in A.S.No.2/1993. It was also further stated that the Government in Revenue Department issued a notification and published in A.P. Gazette No.3-A dated 18-1-1990 the list of wakf properties (Registered and unregistered) in Karimnagar District (Second Part) of Telangana Region surveyed under Section 4(3) of the Act and published under Section 5(2). As per Gazette notification at page No.297 and at Sl.No.9318 the lands in Sy.Nos.612, 623, 625, 626, 627, 628, 773 to 775, 779, 789, 792, 793, 788, 805, 928, 489, 624, 629, 643 and 772 situated at Dharmapuri are declared as wakf properties. It is therefore submitted that the Board is the absolute owner of Survey No.643 under dispute and the petitioners have no right whatsoever on it. It is submitted that the land in Survey No.643 is valuable land and the present market value of the land had been increased abnormally as it is adjacent to National High Way and is very much suitable for house sites. It was further submitted that the 1st petitioner Sri Syed Azmath Ali and in-charge Mutawalli in his application dated 31-10-2000 addressed to the District Revenue Officer and District Wakf Committee, Karimnagar had submitted that Sy.No.643 measuring Acs.7-02 gts. is purely Board's land and as such the contention of the petitioners that they are the owners of the land is wrong. It was further stated that on 4-9-2004 the President, Muslim Committee,

Dharmapuri submitted a representation to the District Collector stating that Mutawalli and his legal heir of Jama Masjid, Dharmapuri encroached Sy.No.643 measuring Acs.7-09 gts. and was making partition and requested to take action against them and restore the land to Masjid. The said representation was forwarded to the R.D.O. Jagtial and M.R.O. Dharmapuri for enquiry and to take necessary action. Immediately, the M.R.O. Dharmapuri by letter No.B/194/2004 dated 14-9-2004 addressed a letter to the S.H.O. Dharmapuri to stop illegal construction in Sy.No.643. It is also submitted that on the representation the President, District Wakf Committee, Karimnagar also inspected the land personally and enquired and submitted a report dated 6-9-2004 to the Chief Executive Officer, A.P. Wakf Board, Hyderabad that some persons encroached upon the wakf land in Sy.No.1.643 and constructed huts and requested to take action for removal of huts early. Pursuant to this report the C.E.O. of the Board addressed a Lr.No.M1/51/KNR/Prot/2004 dated 5-10-2004 to the District Revenue Officer and District Wakf Officer, Karimnagar to initiate immediate necessary action for the removal of illegally constructed huts in Sy.No.643. A copy of the letter was marked to the M.R.O. Dharmapuri with a similar request. In pursuance of the C.E.O.'s letter the M.R.O. Dharmapuri issued instructions to the M.R.I. Dharmapuri and Panchayat Secretary, Dharmapuri to remove the illegal constructions huts vide Memo No.B/194/2004 dated 18-10-2004. When the Village Secretary and the M.R.I. went to the spot the encroachers i.e., Azmath Ali and others resisted them and created law and order problem. The M.R.O. Dharmapuri filed a complaint before the S.I. of Police, Dharmapuri to take action against them and to see

that no constructions are made in Sy.No.643, measuring Ac.7-09 gts. It was further averred that as per Government in Revenue Department notification published in A.P. Gazette No.3-A dated 18-1-1990 the lands in Survey Nos.612, 623, 625, 626, 627, 628, 773 to 775, 779, 789, 792, 793, 788, 805, 928, 489, 629, 643 and 772 situated at Dharmapuri village are declared as wakf properties (Registered and unregistered) in Karimnagar District (Second Part) of Telangana Region surveyed under Section 4(3) of the Act and published under Section 5(2) of the Act. Since the land measuring Ac.7-02(excluding 0-07 gts. pote kharab) in Survey No.643 is declared as wakf property, the petitioners will have no right over the land. It is not true that the petitioners are not encroachers. It is also false to urge that in order to meet selfish design and to knock away the valuable property a false complaint had been made as if the petitioners are encroachers. As regards the allegations against the 3rd respondent in the affidavit filed in support of the Writ Petition, the 1st respondent pleaded no knowledge and it was also pleaded that it cannot be said that the petitioners are not encroachers. Further it was stated in para-8 of the counter affidavit that the petitioners had misconceived the provisions of Section 54 of the Act. It was stated that the provisions of Section 54 of the Act are enabling provisions facilitating the 1st respondent to take steps for eviction of encroachers into the wakf property. Besides, under the provisions of Section 54 of the Act the 1st respondent is clothed with general powers of superintendence having powers to take steps for recovery of wakf properties. By virtue of the above said provisions the 1st respondent had taken the steps

by addressing a letter to the 2nd respondent to take steps to evict the encroachers. Further, when the petitioners are questioning the provisions of law relating to Section 54 of the Act the proper forum is the Wakf Tribunal. The petitioners had made wild allegation of illegal gratification against the 1st respondent and the 1st respondent reserves his right to proceed against the petitioners for defamation and damages. The petitioners had made baseless allegations and in view of these facts the Writ Petition is not maintainable. Specific stand was taken that the 1st respondent acted in accordance with law since he has got power to issue notice if he is of the opinion that any wakf property had been encroached and to call for explanation and conduct enquiry and pass orders under Section 54(3) of the Act and the aggrieved party has a right to file a suit before the Wakf Tribunal. Hence the Writ Petition is a misconceived one.

8. **The contents of the letter impugned in these Writ Petitions are self-explanatory and on a careful reading of the letter aforesaid it cannot be said that the respondents 1 and 2 are proceeding to throw out the petitioners without following the procedure specified under the provisions of the Act. However, on some apprehension that there is threat of dispossession without following the due course of law, the writ petitioners appear to have invoked the jurisdiction of this Court under Article 226 of the Constitution of India. These Writ Petitions appear to have been moved on apprehension of some anticipated action in future in pursuance of the said letter. It is true that the**

properties of religious institutions are to be protected. It is also needless to say that where the statute prescribes the procedure the same may have to be followed and there cannot be any doubt or controversy on this aspect. An action wholly without authority cannot be upheld by courts on the ground of public interest. Though protecting the public interest or interest of institutions may be of paramount importance the legal rights of the parties and the procedure specified by the statute also cannot be ignored.

9. **The Act referred to supra, Act 43 of 1995, is an Act to provide for the better administration of wakfs and for matters connected therewith or incidental thereto. Section 32 of the Act dealing with** Powers and functions of the Board **reads as hereunder :**

> (1) Subject to any rules that may be made under this Act, the general superintendence of all wakfs in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended :
>
> **Provided that in exercising its powers under this Act in respect of any wakf, the Board shall act in conformity with the directions of the wakf the purposes of the wakf and any usage or custom of the wakf sanctioned by the school of Muslim law to which the wakf belongs.**
>
> Explanation : **For the removal of doubts, it is hereby declared that in this sub-section, "wakf" includes a wakf in order to which any scheme has been made by any Court of law, whether before or after the commencement of this Act.**
>
> **(2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be –**
>
> a. **to maintain a record containing information relating to the origin, income, object and beneficiaries of every wakf;**

b. **to ensure that the income and other property of wakfs are applied to the objects and for the pruposes for which such wakfs were intended or created;**

c. **to give directions for the administration of wakfs;**

d. **to settle schemes of management for a wakf;**

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

e. **to direct –**

vi. **the utilization of the surplus income of a wakf consistent with the objects of a wakf;**

i. **in what manner the income of a wakf, the object of which are not evident from any written instrument, shall be utilized;**

ii. **in any case where any object of wakf has ceased to exist or has become incapable of achievement, that so much of the income of the wakf as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar or to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community:**

Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard.

Explanation: **For the purposes of this clause, the powers of the Board shall be exercised-**

i. **in the case of a Sunni wakf, by the Sunni members of the Board only; and**

ii. **in the case of a Shia wakf, by the Shia members of the Board only;**

Provided that where having regard to the number of the Sunni or Shia members in the Board and other circumstances, it appears to the Board that the power should not be exercised by such members only, it may co-opt such other Muslims being Sunnis or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause;

f. **to scrutinize and approve the budgets submitted by mutawallis and to arrange for the auditing of account of wakfs;**

g. **to appoint and remove mutawallis in accordance with the provisions of this Act;**

h. **to take measures for the recovery of lost properties of any wakf;**

i. **to institute and defend suits and proceedings relating to wakfs;**

j. **to sanction any transfer of immovable property of a wakf by way of sale, gift, mortgage, exchange or lease, in accordance with the provisions of this Act;**

Provided that no such sanction shall be given unless at least two thirds of the members of the Board vote in favour of such transaction;

k. **to administer the Wakf Fund;**

l. **to call for such returns, statistics, accounts and other information from the mutawallis with respect to the wakf property as the Board may, from time to time, require;**

m. **to inspect, or cause inspection of, wakf properties, accounts, records, records or deeds and documents relating thereto;**

n. **to investigate and determine the nature and extent of wakf and wakf property, and to cause, whenever necessary, a survey of such wakf property;**

o. **generally do all such acts as may be necessary for the control, maintenance and administration of wakfs.**

(3) Where the Board has settled a any scheme of management under clause (d) or given any direction under clause (e) of sub-section (2), any person interested in the wakf or affected by such settlement or direction may institute a suit in a Tribunal for setting aside such settlement or directions and the decision of the Tribunal thereon shall be final.

(4) Where the Board is satisfied that any wakf land, which is a wakf property, offers a feasible potential for development as a shopping center, market, housing flats and the like, it may serve upon the mutawalli of the concerned wakf a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to execute the development works specified in the notice.

(5) On consideration of the reply, if any, received to the notice issued under sub-section (4), the Board, if it is satisfied that the mutawalli is not willing or is not capable of executing the works required to be executed in terms of the notice, it may, with the prior approval of the Government, take over the property, clear it of any building or structure

thereon, which, in the opinion of the Board is necessary for execution of the works and execute such works from wakf funds or from the finances which may be raised on the security of the properties on the wakf concerned, and control and manage the properties till such time as all expenses incurred by the Board under this section, together with interest thereon, the expenditure on maintenance of such works and other legitimate charges incurred on the property are recovered from the income derived from the property:

Provided that the Board shall compensate annually the mutawalli of the concerned wakf to the extent of the average annual net income derived from the property during the three years immediately proceeding the taking over of the property by the Board.

(6) After all the expenses as enumerated in sub-section (5) have been recouped from the income of the developed properties, the developed properties shall be handed over to mutawalli of the concerned wakf.

Section 54 of the Act dealing with Removal of encroachment from wakf property, specifies :

(1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is wakf property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is wakf property and that there has been an encroachment on any such wakf property, he may, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the wakf.

(4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-section from instituting a suit in a Tribunal to establish that he has

right, title or interest in the land, building, space or other property:

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgagee by the mutawalli of the wakf or by any other person authorized by him in this behalf.

Section 55 of the Act dealing with Enforcement of orders made under Section 54 **reads as hereunder :**

Where the person, ordered under sub-section (3) of Section 54 to remove any encroachment, omits or fails to remove such enforcement, within the time specified in the order or, as the case may be, fails to vacate the land, building, space or other property to which the order relates, within the time aforesaid, the Chief Executive Officer may apply to the Sub-Divisional Magistrate within the local limits of whose jurisdiction the land, building, space or other property is situate for evicting the encroacher, and, thereupon, such Magistrate shall make an order directing the encroacher to remove the encroachment, or, as the case may be, vacate the land, building, space or other property and to deliver possession thereof to the concerned mutawalli and in default of compliance with the order, remove the encroachment or, as the case may be, evict the encroachment from the land, building, space or other property and may, for the purpose, like such police assistance as may be necessary.

10. **At this stage, this Court need not go into the further details of the controversial contentions raised by the parties. Whatever may be the status of the writ petitioners, the respondents 1 and 2 are bound to follow the procedure contemplated by the provisions of the Act. It is no doubt true that the Writ Petitions are moved only on apprehension or anticipated action in pursuance of the letter impugned. At any rate, the said apprehension cannot be said to be a baseless apprehension in the light of the specific stand taken by the 1st respondent in the counter affidavit. I n** Adapapa Venkata Reddy alias

Attambakam Venkata Reddy Vs. Revenue Divisional Officer and Sub-Divisional Magistrate, Gudur **while dealing with Section 54(3) and Section 55 of the Act and the eviction of encroachers it was held that passing of an order by Wakf Board under Section 54(3) after issuing a notice under Section 54(1) even if no explanations were offered requiring encroachers to vacate wakf land being mandatory unless such order is passed the question of requisitioning the Sub-Divisional Officer under Section 55 to order eviction would not arise and such prescribed procedure not having been followed, the order of Sub-Divisional Officer is liable to be set aside and the scheme of the Act and Sections 54 and 55 of the Act also had been explained. Hence, in the light of the respective stands taken by the parties, it would be just to dispose of the Writ Petitions with a direction to maintain status-quo already granted by this Court until the procedure contemplated by the provisions of the Act is followed. However, it is made clear that the concerned authorities are at liberty to initiate action and proceed in accordance with the provisions of the Act.**

11. **Accordingly, with the above directions the Writ Petitions are disposed of. No order as to costs.**

_____

Justice P.S. Narayana

Date : -6-2005

L.R. copy to be marked : YES / No

AM

To

One fair copy to Hon'ble Sri Justice P.S. Narayana (for his Lordship's kind perusal)

1 Chief Executive Officer, The Andhra Pradesh State Wakf Board, Haj House

Complex, Opposite to Public Gardens, Nampalli, Hyderabad.

2 The District Revenue Officer, and District Wakf Officer, C/o. Collectorate

Complex, Karimnagar.

3 The President, District Wakf Committee,
Collectorate Complex, Karimnagar.

4 Mr. Mohd. Afzal, S/o. Mohd. Ibrahim,

Advisor, Muslim Committee,
R/o. Dharmapuri Village and Mandal, Karimnagar District.

5. Two C.Cs. to Standing Counsel for A.P. Wakf Board,

High court of Andhra Pradesh,

Hyderabad.

6. **8 L.R. copies**

7. The Under Secretary, Union of India, Ministry of Law, Justice

and Company Affairs, New Delhi.

8. The Secretary, A.P. Advocates Association Library, High court Buildings, Hyderabad.

9. Two C.D. copies

10) 1 CC to MR.ALI FAROOQUE

11) 1 CC to MRSYED SHAREEF AHMED

12) 2 C.Cs. to G.P. for Revenue, High Court Buildings, Hyderabad.

13) The Mandal Revenue Officer, Dharmapuri.